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22 UNITED STATES DISTRICT COURT
23 FOR THE DISTRICT OF ALASKA

24 UNITED STATES OF AMERICA,

25 No. CR16-0086-SLG-DMS

Plaintiff,

vs.

JOHN PEARL SMITH, II,

Defendant.

26
27 DEFENSE INFORMATIONAL NOTICE FOR STATUS HEARING
28 SCHEDULED FOR JULY 1, 2021

29
30 DEFENSE NOTICE OF INFORMATION
31 FOR STATUS HEARING SCHEDULED
32 FOR JULY 1, 2021- 1

1 On June 17, 2021, the United States of America filed a Motion to Withdraw the
2 Notice of Intent to Seek a Sentence of Death in this matter, which this Court granted.¹
3 The Court set a telephonic status hearing for July 1, 2021, at 9:00 a.m. (Alaska time).²
4 The Defense provides this informational notice in advance of the status conference
5 regarding issues related to scheduling for this non-capital case trial.

6 Trial Length and Date.

7 The Government expects the trial length, including jury selection, to last two to
8 three weeks. Under the Fourth Amended Scheduling Order, the capital trial was to
9 begin on October 18, 2021, and was expected to last to late December 2021. Although
10 there was some suggestion in a prior order that jury selection would still take place on
11 September 13, 2021, the parties jointly submit that jury selection should be in accord
12 with traditional, pre-pandemic practice of summoning jurors on the day trial is to
13 begin.³

15 The Defense suggests that the Court set the non-capital trial within the window
16 of time held for the case when it was capital: requesting the trial to begin November 29,
17 2021. The Government does not agree with this request.

18 There are a number of reasons for this requested schedule. First, we expect
19 some changes in the make-up of the defense team, consistent with our understanding of
20

22
23 ¹ Docket 1086 (Notice to Withdraw), Docket 1087 (Text Order Granting Dkt. 1086).

24 ² Docket 1089 (Text Order).

25 ³ Picking juror a month before trial runs the risk of losing jurors in the intervening month.

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1 the general practice in the District. The Defense requests the Court address the number
2 of defense attorneys and rates *ex parte*. With that said, one of the defense attorneys,
3 Suzanne Lee Elliott, will shift to a more limited role because she was hired by the
4 Washington Appellate Project (WAP), with a start date set for the completion of this
5 case. At the time she was hired, that was expected to be early 2020. Due to the
6 pandemic, the trial was re-scheduled to 2021, and Ms. Elliott adjusted her fulltime start
7 date. In expectation of the need to reduce staffing levels on the case now, and because
8 Ms. Elliott's new position will allow her to continue on this matter in a limited role
9 (maintaining client contact and assisting with legal research and writing as needed), we
10 note that the remaining counsel will need to adjust and absorb her trial assignments.
11

12 Second, Attorney Mark Larrañaga is currently scheduled to begin a re-trial of a
13 Washington state murder case in mid-September. The original trial, which Mr.
14 Larrañaga tried in 2010, took ten (10) weeks. The conviction was subsequently reversed
15 on appeal and remanded for a new trial. It has always been the defense's position that
16 the defendant was wrongfully charged and convicted – a position that has only
17 strengthened with evidence and interviews obtained since the first trial. Consequently,
18 the defendant has been in-custody for over ten years for a crime he didn't commit. Mr.
19 Larrañaga has remained involved in the case, including arguing before the Washington
20 Court of Appeals and Washington State Supreme Court, since the first trial a decade
21 ago. All parties anticipate the remand trial will take the same number of weeks,
22 finishing mid-November.
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If the Court sets the trial in this case to begin November 29, 2021, the Defense proposes the following case schedule:

July 19, 2021 Parties to produce remaining *Jencks* material pursuant to 18 U.S.C. § 3500; Fed. R. Crim. P. 26.2.⁴

September 1, 2021 Deadline for parties to provide the Court with a joint witness list for trial.⁵

September 8, 2021 Government Fed. R. Ev. (FRE) 404(b) Notice.
Government to file ex parte any previously undisclosed
18 U.S.C. § 3432 witness information along with
arguments addressing why any information should not be
furnished to the defense.

October 21, 2021 All pretrial motions, including discovery motions,
Daubert motions, and motions in limine.

October 27, 2021 Exhibit lists filed with the Court

November 3, 2021 Trial briefs, jury instructions, verdict forms, and requested voir dire filed and provided to the Court.

November 22, 2021 Final pretrial conference: Defense provided with all remaining 18 U.S.C. §3432 material.

November 29, 2021 Jury selection / trial begins

Mr. Smith is currently incarcerated at Federal Detention Center (FDC) in SeaTac, Washington. He does not have counsel in the Anchorage, Alaska, area. In order to confer with counsel and prepare for trial, Defense respectfully requests Mr.

⁴ Docket 935, pg. 3. Since the matter is no longer capital, there are many deadlines (*i.e.*, related to Rule 12.2(b)(2)) of the Fourth Amended Scheduling Order that are moot. See *e.g.*, Docket 935, pg. 3 – 5.

⁵ We note that due to the pandemic, much of the witness interviewing necessary to prepare for the defense case had to be postponed and is only now re-starting in full. We anticipate needing the approximately six weeks between receiving *Jencks* and submitting a witness list to contact (or re-locate) and interview guilt-innocence related witnesses.

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1 Smith remain at FDC as long as possible, and not be transported to Anchorage, Alaska,
2 until one week before any trial date set by the Court.
3

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24 Attorneys for Mr. Smith
25

18 Certificate of Service:

19 I hereby certify that I electronically filed the
20 foregoing, and any attachments, with the
21 Clerk of court for the U.S. District Court for
22 the District of Alaska by using the district's
23 CM/ECF system on June 30, 2021. All
participants in this case are registered
CM/ECF users and will be served by the
district's CM/ECF system.

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